

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2017-049**

THADDEOUS PRICE

APPELLANT

**V. FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER**

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

APPELLEE

** ** *

This matter came on for a pre-hearing conference on July 11, 2017, at 10:00 a.m. EST, at 28 Fountain Place, Frankfort, Kentucky, before the Hon. Stafford Easterling, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Thaddeous Price, was present and represented by newly appointed counsel, the Hon. Mark Bringelman. The Agency/Appellee, Education and Workforce Development Cabinet, was present and represented by the Hon. Tess Russell.

This matter is before Hearing Officer Stafford Easterling for a ruling on the Agency's Motion to Dismiss filed with the Personnel Board on July 24, 2017. At issue is the Appellant's claim that he had been penalized because the Agency retaliated against him by issuing him a written reprimand for misconduct. The Agency's Motion to Dismiss argues that, as a matter of law, a written reprimand is not defined as a penalization by KRS 18A.005(24) and, therefore, the Appellant has no right to appeal his written reprimand to the Personnel Board. The Appellant was given an opportunity to respond to the Agency's Motion to Dismiss, but failed to do so. This matter now stands submitted to the Hearing Officer for a ruling on the Agency's Motion to Dismiss.

BACKGROUND

1. During the pendency of this appeal, Appellant, Thaddeous Price, was a classified employee with status within the Education and Workforce Development Cabinet ("EWDC").

2. On or about February 20, 2017, the Appellant was issued a written reprimand from Administrative Branch Manager Donna Stratton for misconduct.

3. Specifically, the Appellant was reprimanded because he is alleged to have exhibited inappropriate, disrespectful and disruptive behavior in the workplace by raising his voice, interrupting, and loudly arguing with the Administrative Branch Manager and the Human Resources Liaison.

4. The Appellant alleges the written reprimand was issued in retaliation.

5. KRS 18A.005(24) provides:

‘Penalization’ means demotion, dismissal, suspension, fines, and other disciplinary actions; involuntary transfers; salary adjustments; any action that increases or diminishes the level, rank, discretion, or responsibility of an employee without proper cause or authority, including a reclassification or reallocation to a lower grade or rate of pay; and the abridgment or denial of other rights granted to state employees.

6. KRS 18A.095(18)(a) provides, in pertinent part, that the Personnel Board “may deny any appeal after a preliminary hearing if it lacks jurisdiction to grant relief.”

FINDINGS OF FACT

1. During the pendency of this appeal, Appellant, Thaddeous Price, was a classified employee with status within the Education and Workforce Development Cabinet (“EWDC”).

2. The Hearing Officer finds that the written reprimand issued to the Appellant on or about February 20, 2017, does not amount to a penalization as defined by KRS 18A.005(24). See Melissa Perkinson v. Justice and Public Safety Cabinet, 2014 WL 4965382 (KY PB).

3. The Hearing Officer finds that the Appellant has not stated a claim of retaliation that should proceed to an evidentiary hearing. The Appellant did not contest the facts alleged in the written reprimand at any level. The Hearing Officer finds that the bare claim of retaliation alleged by the Appellant stems from Appellant’s erroneous belief that his Administrative Branch Manager’s authority to correct his inappropriate workplace behavior is diminished because he previously filed an administrative grievance. This is not so.

4. Further, the Hearing Officer finds that the Appellant’s general allegations that his Administrative Branch Manager “allows employee’s [sic] to badger, assault [sic] and disrespect [sic] me at my work station” does not constitute an actionable claim of retaliation.

CONCLUSIONS OF LAW

1. The Hearing Officer finds the determination of whether an employee has been retaliated against under KRS 18A lies solely with the Personnel Board. Nonetheless, it is also true that the Hearing Officer has a duty to closely review jurisdictional motions and determine whether the Personnel Board does in fact have jurisdiction to consider a claim.

2. The Hearing Officer concludes in order to state a claim of retaliation that could proceed to evidentiary hearing, the alleged retaliation must in some way be in reaction to the Appellant having pursued a legal right.

3. The Hearing Officer finds that the Appellant's claim of retaliation must fail as a matter of law prior to the taking of evidence. The Hearing Officer believes the Appellant's claim of retaliation, on its face, does not offer sufficient facts to state a legitimate claim of retaliation. The holding in Redmon v. McDaniel, 540 S.W.2d 870 (Ky. 1976) is instructive here. It is not illegal to say you will do what you have the legal right to do. In this case, this includes the Administrative Branch Manager reprimanding the Appellant for exhibiting inappropriate behavior in the workplace. In other words, this Hearing Officer sees no way the Appellant could prevail with the facts being as they are--no *prima facie* case of retaliation has been stated.

4. Pursuant to KRS 18A.095(18)(a), the Board, subsequent to a pre-hearing conference, may, on the recommendation of the Hearing Officer, dismiss or deny an appeal if it lacks jurisdiction to grant relief. The Hearing Officer concludes that the Board lacks jurisdiction to grant relief, as the Appellant has not stated a claim under law nor a justiciable claim of retaliation whereby the Board could grant any meaningful relief to the Appellant.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **THADDEOUS PRICE V. EDUCATION AND WORKFORCE DEVELOPMENT CABINET, (APPEAL NO. 2017-049)** be **DISMISSED**.

NOTICE OF EXCEPTION AND APPEAL RIGHTS

Pursuant to KRS 13B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that are filed by the other party within five (5) days of the date on which the exceptions are filed with the Kentucky Personnel Board. 101 KAR 1:365, Section 8(1). Failure to file exceptions will result in preclusion of judicial review of those issues not specifically excepted to. On appeal a circuit court will consider only the issues a party raised in written exceptions. See Rapier v. Philpot, 130 S.W.3d 560 (Ky. 2004).

Any document filed with the Personnel Board shall be served on the opposing party.

The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

Each party has thirty (30) days after the date the Personnel Board issues a Final Order in which to appeal to the Franklin Circuit Court pursuant to KRS 13B.140 and KRS 18A.100.

ISSUED at the direction of **Hearing Officer Stafford Easterling** this 14th day of September, 2017.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Tess Russell

Hon. Mark Brengelman